

Chapter 3

Appropriation

73-3-1 Appropriation -- Manner of acquiring water rights.

- (1) A person may acquire a right to the use of the unappropriated public waters in this state only as provided for in this title.
- (2) The appropriation of public waters in the state shall comply with the requirements of this title.
- (3) Except as provided in Subsection (7), a person obtaining, initiating the use of, or providing notice of intent to appropriate a water right shall comply with the requirements of this chapter.
- (4) An appropriation may be made only for a useful and beneficial purpose.
- (5)
 - (a) Between appropriators, the one first in time is first in rights.
 - (b) A use designated by an application to appropriate any of the unappropriated waters of the state that would materially interfere with a more beneficial use of the water shall be dealt with as provided in Section 73-3-8.
- (6) A person may not acquire a right to the use of water either appropriated or unappropriated by adverse use or adverse possession.
- (7) Notwithstanding Section 73-3-2, a person may directly capture and store precipitation as provided in Section 73-3-1.5.

Amended by Chapter 19, 2010 General Session

73-3-1.5 Capture and storage of precipitation.

- (1) As used in this section, "parcel" means an identifiable contiguous unit of property that is treated as separate for valuation or zoning purposes and includes an improvement on that unit of property.
- (2) Notwithstanding Section 73-3-2, a person may:
 - (a) directly capture and store precipitation on a parcel owned or leased by the person in accordance with Subsection (3) or (4); and
 - (b) place the water captured and stored as provided in Subsection (2)(a) to beneficial use on the parcel on which the water is captured and stored.
- (3) After registering for the capture and storage of precipitation in accordance with Subsection (5), a person may collect and store precipitation in a container installed in accordance with the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act, if:
 - (a) for a person who uses only one container on a parcel, the total capacity of the container is no more than 2,500 gallons; or
 - (b) for a person who uses more than one container on a parcel, the aggregate capacity of the containers is no more than 2,500 gallons.
- (4) A person may collect and store precipitation, without registering under Subsection (5), in no more than two covered storage containers if neither covered storage container has a maximum storage capacity of greater than 100 gallons.
- (5)
 - (a) The state engineer shall provide a website on which a person may register as required by Subsection (3).
 - (b) To register, a person shall complete information required by the state engineer including the:
 - (i) name and address of the person capturing or storing precipitation;

- (ii) total capacity of all containers storing precipitation; and
 - (iii) street address or other suitable description of the location where precipitation is to be captured and stored.
- (6) Beneficial use of water under Subsection (2)(b) does not constitute a water right and may not be:
 - (a) changed under Section 73-3-3;
 - (b) assigned; or
 - (c) consolidated with a water right.
- (7) A person who beneficially uses water under Subsection (2)(b) shall comply with:
 - (a) state law; and
 - (b) local health and safety rules and regulations.

Amended by Chapter 260, 2013 General Session

73-3-2 Application for right to use unappropriated public water -- Necessity -- Form -- Contents -- Validation of prior applications by state or United States or officer or agency thereof.

- (1)
 - (a) In order to acquire the right to use any unappropriated public water in this state, any person who is a citizen of the United States, or who has filed his declaration of intention to become a citizen as required by the naturalization laws, or any association of citizens or declarants, or any corporation, or the state of Utah by the directors of the divisions of travel development, business and economic development, wildlife resources, and state lands and forestry, or the executive director of the Department of Transportation for the use and benefit of the public, or the United States of America shall make an application in a form prescribed by the state engineer before commencing the construction, enlargement, extension, or structural alteration of any ditch, canal, well, tunnel, or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation.
 - (b) The application shall be upon a form to be furnished by the state engineer and shall set forth:
 - (i) the name and post office address of the person, corporation, or association making the application;
 - (ii) the nature of the proposed use for which the appropriation is intended;
 - (iii) the quantity of water in acre-feet or the flow of water in second-feet to be appropriated;
 - (iv) the time during which it is to be used each year;
 - (v) the name of the stream or other source from which the water is to be diverted;
 - (vi) the place on the stream or source where the water is to be diverted and the nature of the diverting works;
 - (vii) the dimensions, grade, shape, and nature of the proposed diverting channel; and
 - (viii) other facts that clearly define the full purpose of the proposed appropriation.
- (2)
 - (a) In addition to the information required in Subsection (1)(b), if the proposed use is for irrigation, the application shall show:
 - (i) the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof; and
 - (ii) the character of the soil.
 - (b) In addition to the information required in Subsection (1)(b), if the proposed use is for developing power, the application shall show:
 - (i) the number, size, and kind of water wheels to be employed and the head under which each wheel is to be operated;

- (ii) the amount of power to be produced;
 - (iii) the purposes for which and the places where it is to be used; and
 - (iv) the point where the water is to be returned to the natural stream or source.
- (c) In addition to the information required in Subsection (1)(b), if the proposed use is for milling or mining, the application shall show:
- (i) the name of the mill and its location or the name of the mine and the mining district in which it is situated;
 - (ii) its nature; and
 - (iii) the place where the water is to be returned to the natural stream or source.
- (d)
- (i) The point of diversion and point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments or permanent federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of the corners and monuments.
 - (ii) If the point of diversion or point of return is located in unsurveyed territory, the point may be designated with reference to a permanent, prominent natural object.
 - (iii) The storage of water by means of a reservoir shall be regarded as a diversion, and the point of diversion in those cases is the point where the longitudinal axis of the dam crosses the center of the stream bed.
 - (iv) The point where released storage water is taken from the stream shall be designated as the point of rediversion.
 - (v) The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision if upon surveyed land. The height of the dam, the capacity of the reservoir, and the area of the surface when the reservoir is filled shall be given.
 - (vi) If the water is to be stored in an underground area or basin, the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles of it, the point of area of intake, the location of the underground area or basin, and the points of collection.
- (e) Applications for the appropriation of water filed prior to the enactment of this title, by the United States of America, or any officer or agency of it, or the state of Utah, or any officer or agency of it, are validated, subject to any action by the state engineer.

Amended by Chapter 136, 2001 General Session

73-3-3 Permanent or temporary changes to a water right.

- (1) For purposes of this section:
- (a) "Permanent change" means a change, for an indefinite period of time, to the:
 - (i) point of diversion;
 - (ii) place of use;
 - (iii) period of use;
 - (iv) nature of use; or
 - (v) storage of water.
 - (b) "Person entitled to the use of water" means:
 - (i) the holder of an approved but unperfected application to appropriate water;
 - (ii) the record owner of a perfected water right;
 - (iii) a person who has written authorization from a person described in Subsection (1)(b)(i) or (ii) to file a change application on that person's behalf; or

- (iv) a shareholder in a water company who is authorized to file a change application in accordance with Section 73-3-3.5.
- (c)
 - (i) "Quantity impairment" means any reduction in the amount of water a person is able to receive in order to satisfy an existing right to the use of water that would result from an action proposed in a change application, including:
 - (A) diminishing the quantity of water in the source of supply for the existing right;
 - (B) a change in the timing of availability of water from the source of supply for the existing right; or
 - (C) enlarging the quantity of water depleted by the nature of the proposed use when compared with the nature of the currently approved use.
 - (ii) "Quantity impairment" does not mean a decrease in the static level of water in an underground basin or aquifer that would result from an action proposed to be taken in a change application, if the volume of water necessary to satisfy an existing right otherwise remains reasonably available.
- (d) "Temporary change" means a change for a fixed period of time, not exceeding one year, to the:
 - (i) point of diversion;
 - (ii) place of use;
 - (iii) period of use;
 - (iv) nature of use; or
 - (v) storage of water.
- (2)
 - (a) A person who proposes to file a permanent or temporary change application may request consultation with the state engineer, or the state engineer's designee, before filing the application in order to review the requirements of the change application process, discuss potential issues related to the change, and provide the applicant with information.
 - (b) Statements made and information presented in the consultation are not binding on the applicant or the state engineer.
 - (c) The consultation described in Subsection (2)(a) may occur in the state engineer's regional office for the region where the proposed change would occur.
- (3)
 - (a) A person entitled to the use of water may make a permanent or temporary change to an existing right to use water, including a right involved in a general determination of rights or other suit, if:
 - (i) the person makes the change in accordance with this section;
 - (ii) except as provided by Section 73-3-30, the change does not impair an existing right without just compensation or adequate mitigation; and
 - (iii) the state engineer approves the change application, consistent with the requirements of Section 73-3-8.
 - (b) A change application on a federal reclamation project water right shall be signed by:
 - (i) the local water users organization that is contractually responsible for:
 - (A) the operation and maintenance of the project; or
 - (B) the repayment of project costs; and
 - (ii) the record owner of the water right.
 - (c) A change application on a United States Indian Irrigation Service water right that is serving the needs of a township or municipality shall be signed by:

- (i) the local public water supplier that is responsible for the operation and maintenance of the public water supply system; and
 - (ii) the record owner of the water right.
- (4)
- (a) Before making a permanent or temporary change, a person entitled to the use of water shall submit a change application upon forms furnished by the state engineer.
 - (b) The application described in Subsection (4)(a) shall include:
 - (i) the applicant's name;
 - (ii) the water right description, including the water right number;
 - (iii) the water quantity;
 - (iv) the stream or water source;
 - (v) if applicable, the point on the stream or water source where the water is diverted;
 - (vi) if applicable, the point to which it is proposed to change the diversion of the water;
 - (vii) the place, nature, period, and extent of the currently approved use;
 - (viii) the place, nature, period, and extent of the proposed use;
 - (ix) if the change applicant is submitting a change application in accordance with Section 73-3-3.5, the information required by Section 73-3-3.5;
 - (x) any proposed change to the storage of water; and
 - (xi) any other information that the state engineer requires.
 - (c) A shareholder in a water company who seeks to make a permanent or temporary change to a water right to which the water company is the record owner shall file a change application in accordance with Section 73-3-3.5.
- (5) In a proceeding before the state engineer, the applicant has the burden of producing evidence sufficient to support a reasonable belief that the change can be made in compliance with this section and Section 73-3-8, including evidence:
- (a) that the change will not cause a specific existing right to experience quantity impairment; or
 - (b) if applicable, rebutting the presumption of quantity impairment described in Subsection 73-3-8(6)(c).
- (6) A change of an approved application to appropriate water does not:
- (a) affect the priority of the original application to appropriate water; or
 - (b) extend the time period within which the construction of work is to begin or be completed.
- (7) Any person who makes a permanent or temporary change without first filing and obtaining approval of a change application providing for such change:
- (a) obtains no right by the change;
 - (b) is guilty of an offense punishable under Section 73-2-27 if the change is made knowingly or intentionally; and
 - (c) shall comply with the change application process.
- (8)
- (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.
 - (b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

Amended by Chapter 245, 2015 General Session

Amended by Chapter 249, 2015 General Session

Amended by Chapter 249, 2015 General Session, (Coordination Clause)

Amended by Chapter 251, 2015 General Session

Amended by Chapter 298, 2015 General Session

73-3-3.5 Application for a change of point of diversion, place of use, or purpose of use of water in a water company made by a shareholder.

(1) As used in this section:

- (a) "Shareholder" means the owner of a share of stock, or other evidence of stock ownership, that entitles the person to a proportionate share of water in a water company.
- (b) "Water company" means, except as described in Subsection (1)(c), any company, operating for profit or not for profit, where a shareholder has the right to receive a proportionate share, based on that shareholder's ownership interest, of water delivered by the company.
- (c) "Water company" does not include a public water supplier, as defined in Section 73-1-4.

(2)

- (a) A shareholder who seeks to file a change application under Section 73-3-3 to make a change to some or all of the water rights represented by the shareholder's shares in a water company shall:
 - (i) prepare a proposed change application on forms furnished by the state engineer; and
 - (ii) provide the proposed change application to the water company by personal delivery with a signed receipt, certified mail, or electronic mail with confirmation of receipt.
- (b) The water company and the shareholder shall cooperate in supplying information relevant to preparation or correction of the shareholder's change application.
- (c) In addition to the information required under Section 73-3-3, the proposed change application shall include:
 - (i) the certificate number of the stock affected by the change;
 - (ii) a description of the land proposed to be retired from irrigation in accordance with Section 73-3-3, if the proposed change in place or nature of use of the water involves a situation where the water was previously used for irrigation;
 - (iii) an agreement by the shareholder to continue to pay all applicable corporate assessments on the share affected by the change; and
 - (iv) any other information that the water company may reasonably need to evaluate the proposed change application.

(3)

- (a) The water company shall respond to the proposed change application described in Subsection (2) within 120 days after the day on which the water company receives the proposed change application.
- (b) The water company's response to the proposed change application shall be in writing and shall:
 - (i) consent to the proposed change;
 - (ii) consent to the proposed change, subject to certain conditions described by the water company; or
 - (iii) decline to consent to the proposed change, describing the reasons for declining to consent.
- (c) If the water company fails to timely respond, as described in Subsection (3)(a), the failure to respond shall be considered the water company's consent to the proposed change application and the shareholder may file the change application with the state engineer.

(4)

- (a) In reviewing a shareholder's proposed change application, a water company may consider:
 - (i) whether an increased cost to the water company or its shareholders results from the proposed change;
 - (ii) whether the proposed change will interfere with the water company's ability to manage and distribute water for the benefit of all shareholders;

- (iii) whether the proposed change represents more water than the shareholder's proportionate share of the water company's right;
 - (iv) whether the proposed change would create preferential access to use of particular company water rights to the detriment of other shareholders;
 - (v) whether the proposed change will impair the quantity or quality of water delivered to other shareholders under the existing water rights of the water company, including rights to carrier water;
 - (vi) whether the proposed change violates a statute, ordinance, regulation, or order of a court or government agency;
 - (vii) if applicable, whether the shareholder has or can arrange for the beneficial use of water to be retired from irrigation within the water company's service area under the proposed change; and
 - (viii) the cumulative effects that the approval of the change application may have on other shareholders or water company operations.
- (b) The water company may not withhold consent if any potential damage, liability, or impairment to the water company, or its shareholders, can be reasonably mitigated without cost to the water company.
- (c) The water company may require the shareholder to pay all reasonable and necessary costs associated with the change application, but may not impose unreasonable exactions.
- (5)
- (a) If the water company declines to consent to the proposed change application, stating its reasons, the shareholder may file an action in district court, seeking court review of the reasonableness of the conditions imposed for giving consent or the reasons stated for declining consent and a final order allowing the shareholder to file the proposed change application with the state engineer.
 - (b) If the water company consents to the proposed change application subject to conditions to which the shareholder does not agree, the shareholder may file the change application with the state engineer as provided in Subsection (6), without waiving the shareholder's right to contest conditions set by the water company under Subsection (3)(b)(ii).
 - (c) During or after the completion of the proceeding before the state engineer commenced under Subsection (6), the shareholder may file an action in district court seeking court review of the reasonableness of the conditions imposed by the water company for giving consent.
 - (d) In an action brought under Subsection (5)(a), (b), or (c), the court:
 - (i) shall refer the parties to mediation under Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, unless one or both parties decline mediation; and
 - (ii) may award costs and reasonable attorney fees to the prevailing party if mediation does not occur because the other party declined to participate in mediation.
- (6) If the water company consents to the proposed change, the water company fails to respond as required by Subsection (3)(a), the court has entered an order described in Subsection (5)(a), or the water company consents to the proposed change subject to conditions to which the shareholder does not agree, as described in Subsection (5)(b), the shareholder may commence an administrative proceeding by filing the change application with the state engineer in accordance with Section 73-3-3 and this section.
- (7) The shareholder shall include as part of the change application filed with the state engineer under Subsection (5)(b) or (6):
- (a) the water company's response to the shareholder's proposed change application;
 - (b) if applicable, an affidavit signed by the shareholder documenting the water company's failure to respond in the time period described in Subsection (3)(a); or

- (c) if applicable, the court order described in Subsection (5)(a).
- (8)
- (a) The state engineer shall evaluate a shareholder's change application in the same manner used to evaluate a change application submitted under Section 73-3-3, using the criteria described in Section 73-3-8.
- (b) Nothing in this section limits the authority of the state engineer in evaluating and processing a change application, including the authority to require or allow a shareholder or water company to submit additional relevant information, if the state engineer finds an absence of prejudice and allows adequate time and opportunity for the other party to respond.
- (9) If the state engineer approves a shareholder's change application, the state engineer may, for shares included in the approval, require that the shareholder requesting the change be current on all water company assessments and continue to pay all reasonably applicable future assessments, with credit given to the shareholder for any cost savings to the company resulting from the change.
- (10) By mutual agreement only, and when the shares will rely upon a different diversion and delivery system, the water company and the shareholder may negotiate a buyout from the water company that may include a pro rata share of the water company's existing indebtedness assignable to the shares.
- (11) After an application has been approved by the state engineer, the shareholder may file requests for extensions of time to submit proof of beneficial use under the change application without further involvement of the water company.
- (12) If, after a proposed change has been approved and gone into effect, a shareholder fails to substantially comply with a condition described in Subsection (9), or any condition reasonably imposed by the company and agreed to by the shareholder, and neglects to remedy the failure after written notice from the water company that allows the shareholder a reasonable opportunity to remedy the failure, no less than 90 days after the day on which the water company gives notice, the water company may petition the state engineer to order a reversal of the change application approval.
- (13)
- (a) The shareholder requesting the change shall have a cause of action, including an award of actual damages incurred, against the water company if the water company:
- (i) unreasonably withholds approval of a requested change;
 - (ii) imposes unreasonable conditions in its approval; or
 - (iii) withdraws approval of a change application in a manner other than as provided in Subsection (12).
- (b) The court may award costs and reasonable attorney fees:
- (i) to the shareholder if the court finds that the water company acted in bad faith when it declined to consent to the proposed change or conditioned its consent on excessive exactions or unreasonable conditions; or
 - (ii) to the water company if it finds that the shareholder acted in bad faith in refusing to accept conditions reasonably necessary to protect other shareholders if the shareholder's change application is approved.

Amended by Chapter 249, 2015 General Session

73-3-4 "Received," "filed" defined.

Whenever in this title the word "received" is used with reference to any paper deposited in the office of the state engineer, it shall be deemed to mean the date when such paper was first

deposited in the state engineer's office; and whenever the term "filed" is used, it shall be deemed to mean the date when such paper was acceptably completed in form and substance and filed in said office.

No Change Since 1953

73-3-5 Action by engineer on applications.

- (1) On receipt of each application containing the information required by Section 73-3-2, and payment of the filing fee, it shall be the duty of the state engineer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt for that purpose.
- (2) It shall be the duty of the state engineer to examine the application and determine whether any corrections, amendments or changes are required for clarity and if so, see that such changes are made before further processing.
- (3) All applications which shall comply with the provisions of this chapter and with the regulations of the state engineer shall be filed and recorded.
- (4) The state engineer may issue a temporary receipt to drill a well at any time after the filing of an application to appropriate water therefrom, as provided by this section if all fees be advanced and if in his judgment there is unappropriated water available in the proposed source and there is no likelihood of impairment of existing rights; provided, however, that the issuance of such temporary permits shall not dispense with the publishing of notice and the final approval or rejection of such application by the state engineer, as provided by this chapter.
- (5) The state engineer may send the necessary notices and address all correspondence relating to each application to the owner thereof as shown by the state engineer's records, or to his attorney in fact provided a written power of attorney is filed in the state engineer's office.

Amended by Chapter 136, 2001 General Session

73-3-5.5 Temporary applications to appropriate water -- Approval by engineer -- Expiration -- Proof of appropriation not required.

- (1) The state engineer may issue temporary applications to appropriate water for beneficial purposes.
- (2) The provisions of this chapter governing regular applications to appropriate water shall apply to temporary applications with the following exceptions:
 - (a)
 - (i) The state engineer shall undertake a thorough investigation of the proposed appropriation, and if the temporary application complies with the provisions of Section 73-3-8, may make an order approving the application.
 - (ii) If the state engineer finds that the appropriation sought might impair other rights, before approving the application, the state engineer shall give notice of the application to all persons whose rights may be affected by the temporary appropriations.
 - (b) The state engineer may issue a temporary application for a period of time not exceeding one year.
 - (c)
 - (i) The state engineer, in the approval of a temporary application, may make approval subject to whatever conditions and provisions he considers necessary to fully protect prior existing rights.

- (ii) If the state engineer determines that it is necessary to have a water commissioner distribute the water under a temporary application for the protection of other vested rights, the state engineer may assess the distribution costs against the holder of the temporary application.
- (d)
 - (i) A temporary application does not vest in its holder a permanent vested right to the use of water.
 - (ii) A temporary application automatically expires and is cancelled according to its terms.
- (e) Proof of appropriation otherwise required under this chapter is not required for temporary applications.

Amended by Chapter 161, 1987 General Session

73-3-5.6 Applications to appropriate or permanently change a small amount of water -- Proof of appropriation or change.

- (1) As used in this section:
 - (a) "Application" means an application to:
 - (i) appropriate a small amount of water; or
 - (ii) permanently change a small amount of water.
 - (b) "Livestock water right" means a right for:
 - (i) livestock to consume water:
 - (A) directly from the water source; or
 - (B) from an impoundment into which the water is diverted; and
 - (ii) associated uses of water related to the raising and care of livestock.
 - (c) "Proof" means proof of:
 - (i) appropriation; or
 - (ii) permanent change.
 - (d) "Small amount of water" means the amount of water necessary to meet the requirements of:
 - (i) one residence;
 - (ii) 1/4 acre of irrigable land; and
 - (iii) a livestock watering right for:
 - (A) 10 cattle; or
 - (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than cattle.
- (2) The state engineer may approve an application if:
 - (a) the state engineer undertakes a thorough investigation of the application;
 - (b) notice is provided in accordance with Subsection (3);
 - (c) the application complies with the state engineer's regional policies and restrictions and Section 73-3-3 or 73-3-8, as applicable; and
 - (d) the application does not conflict with a political subdivision's ordinance:
 - (i) for planning, zoning, or subdivision regulation; or
 - (ii) under Section 10-8-15.
- (3)
 - (a) Advertising of an application specified in Subsection (2) is at the discretion of the state engineer.
 - (b) If the state engineer finds that the uses proposed by the application may impair other rights, before approving the application, the state engineer shall give notice of the application according to Section 73-3-6.
- (4) An applicant receiving approval under this section is responsible for the time limit for construction and submitting proof as required by Subsection (6).

- (5) Sixty days before the end of the time limit for construction, the state engineer shall notify the applicant by mail when proof is due.
- (6)
 - (a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate under Section 73-3-17 if an applicant files an affidavit, on a form provided by the state engineer, as proof.
 - (b) The affidavit shall:
 - (i) specify the amount of:
 - (A) irrigated land; and
 - (B) livestock watered; and
 - (ii) declare the residence is constructed and occupied.
 - (c) The form provided by the state engineer under Subsection (6)(a) may require the information the state engineer determines is necessary to maintain accurate records regarding the point of diversion and place of use.
- (7) If an applicant does not file the proof required by Subsection (6) by the day on which the time limit for construction ends, the application lapses under Section 73-3-18.
- (8)
 - (a) An applicant whose application lapses may file a request with the state engineer to reinstate the application, if the applicant demonstrates that the applicant or the applicant's predecessor in interest:
 - (i) constructed and occupied a residence within the time limit for construction; and
 - (ii) beneficially uses the water.
 - (b) If an applicant meets the requirements of Subsection (8)(a) and submits an affidavit as provided by Subsection (6), the state engineer shall issue a certificate:
 - (i) for the amount of water actually in use as described in the affidavit; and
 - (ii) with a priority date of the day on which the applicant files the request for reinstatement of the application.

Amended by Chapter 367, 2009 General Session

73-3-6 Publication of notice of application -- Corrections or amendments of applications -- Withdrawal of application.

- (1)
 - (a) When an application is filed in compliance with this title, the state engineer shall publish a notice of the application:
 - (i) once a week for a period of two successive weeks in a newspaper of general circulation in the county in which the source of supply is located, and where the water is to be used; and
 - (ii) in accordance within Section 45-1-101 for two weeks.
 - (b) The notice shall:
 - (i) state that an application has been made; and
 - (ii) specify where the interested party may obtain additional information relating to the application.
 - (c) Clerical errors, ambiguities, and mistakes that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.
- (2) After publication of notice to water users, the state engineer may authorize amendments or corrections that involve a change of point of diversion, place, or purpose of use of water, only after republication of notice to water users.
- (3)

- (a) An applicant or an applicant's successor in interest may withdraw an unperfected application by notifying, in writing, the state engineer of the withdrawal.
- (b) Upon receipt of the notice described in Subsection (3)(a), the state engineer shall promptly update state engineer records to reflect that the application has been withdrawn and is of no further force or effect.
- (c) An individual who withdraws an unperfected application under Subsection (3)(a) is not entitled to a refund of fees.

Amended by Chapter 285, 2015 General Session

73-3-7 Protests.

- (1) Any person interested may file a protest with the state engineer:
 - (a) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
 - (b) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- (2) The state engineer shall consider the protest and shall approve or reject the application.

Amended by Chapter 19, 1995 General Session

73-3-8 Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals.

- (1)
 - (a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:
 - (i) for an application to appropriate, there is unappropriated water in the proposed source;
 - (ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;
 - (iii) the proposed plan:
 - (A) is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation; and
 - (B) would not prove detrimental to the public welfare;
 - (iv) the applicant has the financial ability to complete the proposed works;
 - (v) the application was filed in good faith and not for purposes of speculation or monopoly; and
 - (vi) if applicable, the application complies with a groundwater management plan adopted under Section 73-5-15.
 - (b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.
 - (c) If an application does not meet the requirements of this section, it shall be rejected.
- (2)
 - (a) An application to appropriate water for industrial, power, mining development, manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and certain period from the time the water is placed to beneficial use under the application, but in no event may an application be granted for a period of time less than that ordinarily needed to

satisfy the essential and primary purpose of the application or until the water is no longer available as determined by the state engineer.

- (b) At the expiration of the period fixed by the state engineer the water shall revert to the public and is subject to appropriation as provided by this title.
 - (c) No later than 60 calendar days before the expiration date of the fixed time period, the state engineer shall send notice by mail or by any form of electronic communication through which receipt is verifiable, to the applicant of record.
 - (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited water right upon a showing that:
 - (i) the essential purpose of the original application has not been satisfied;
 - (ii) the need for an extension is not the result of any default or neglect by the applicant; and
 - (iii) the water is still available.
 - (e) No extension shall exceed the time necessary to satisfy the primary purpose of the original application.
 - (f) A request for extension of the fixed time period must be filed in writing in the office of the state engineer on or before the expiration date of the application.
- (3)
- (a) Before the approval of any application for the appropriation of water from navigable lakes or streams of the state that contemplates the recovery of salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract for the payment of royalties to the state.
 - (b) The approval of an application shall be revoked in the event of the failure of the applicant to comply with terms of the royalty contract.
- (4)
- (a) The state engineer shall investigate all temporary change applications.
 - (b) The state engineer shall:
 - (i) approve the temporary change if the state engineer finds there is reason to believe that it will not impair an existing right; and
 - (ii) deny the temporary change if the state engineer finds there is reason to believe it would impair an existing right.
- (5)
- (a) With respect to a change application for a permanent change:
 - (i) the state engineer shall follow the same procedures provided in this title for approving an application to appropriate water; and
 - (ii) the rights and duties of a change applicant are the same as the rights and duties of a person who applies to appropriate water under this title.
 - (b) The state engineer may waive notice for a permanent change application if the application only involves a change in point of diversion of 660 feet or less.
 - (c) The state engineer may condition approval of a change application to prevent an enlargement of the quantity of water depleted by the nature of the proposed use when compared with the nature of the currently approved use of water proposed to be changed.
 - (d) A condition described in Subsection (5)(c) may not include a reduction in the currently approved diversion rate of water under the water right identified in the change application solely to account for the difference in depletion under the nature of the proposed use when compared with the nature of the currently approved use.
- (6)

- (a) Except as provided in Subsection (6)(b), the state engineer shall reject a permanent change application if the person proposing to make the change is unable to meet the burden described in Subsection 73-3-3(5).
- (b) If otherwise proper, the state engineer may approve a permanent or temporary change application upon one or more of the following conditions:
 - (i) for part of the water involved;
 - (ii) that the applicant acquire a conflicting right; or
 - (iii) that the applicant provide and implement a plan approved by the state engineer to mitigate impairment of an existing right.
- (c)
 - (i) There is a rebuttable presumption of quantity impairment, as defined in Subsection 73-3-3(1), to the extent that, for a period of at least seven consecutive years, a portion of the right identified in a change application has not been:
 - (A) diverted from the approved point of diversion; and
 - (B) beneficially used at the approved place of use.
 - (ii) The rebuttable presumption described in Subsection (6)(c)(i) does not apply if the beneficial use requirement is excused by:
 - (A) Subsection 73-1-4(2)(e);
 - (B) an approved nonuse application under Subsection 73-1-4(2)(b);
 - (C) Subsection 73-3-30(7); or
 - (D) the passage of time under Subsection 73-1-4(2)(c)(i).
- (d) The state engineer may not consider quantity impairment based on the conditions described in Subsection (6)(c) unless the issue is raised in a:
 - (i) timely protest that identifies which of the protestant's existing rights the protestant reasonably believes will experience quantity impairment; or
 - (ii) written notice provided by the state engineer to the applicant within 90 days after the change application is filed.
- (e) The written notice described in Subsection (6)(d)(ii) shall:
 - (i) specifically identify an existing right the state engineer reasonably believes may experience quantity impairment; and
 - (ii) be mailed to the owner of an identified right, as shown by the state engineer's records, if the owner has not protested the change application.
- (f) The state engineer is not required to include all rights the state engineer believes may be impaired by the proposed change in the written notice described in Subsection (6)(d)(ii).
- (g) The owner of a right who receives the written notice described in Subsection (6)(d)(ii) may not become a party to the administrative proceeding if the owner has not filed a timely protest.
- (h) If a change applicant, all protestants, and all persons identified by the state engineer under Subsection (6)(d)(ii) come to a written agreement regarding how the issue of quantity impairment shall be mitigated, the state engineer may incorporate the terms of the agreement into a change application approval.

Amended by Chapter 245, 2015 General Session

Amended by Chapter 249, 2015 General Session, (Coordination Clause)

73-3-10 Approval or rejection of application.

- (1) When the state engineer approves or rejects an application, the state engineer shall record the approval decision or rejection decision in the state engineer's office.

- (2) On the same day on which the state engineer makes an approval decision or rejection decision described in Subsection (1), the state engineer shall mail the decision to the applicant.
- (3) If an application is approved, the applicant may, upon receipt of the approval decision:
 - (a) proceed with the construction of the necessary works;
 - (b) take any steps required to apply the water to the use described in the application; and
 - (c) perfect the proposed application.
- (4) If the application is rejected, the applicant may not take steps toward the prosecution of:
 - (a) the work proposed in the application; or
 - (b) the proposed diversion and use of the public water in the application.
- (5) In a decision approving an application, other than an application for a fixed time period, the state engineer shall state the time within which:
 - (a) the construction work must be completed; and
 - (b) the water must be applied to beneficial use.

Amended by Chapter 429, 2013 General Session

73-3-11 Statement of financial ability of applicants.

Before either approving or rejecting an application the state engineer may require such additional information as will enable him properly to guard the public interests, and may require a statement of the following facts: In case of an incorporated company, he may require the submission of the articles of incorporation, the names and places of residence of its directors and officers, and the amount of its authorized and its paid-up capital. If the applicant is not a corporation, he may require a showing as to the names of the persons proposing to make the appropriation and a showing of facts necessary to enable him to determine whether or not they are qualified appropriators and have the financial ability to carry out the proposed work, and whether or not the application has been made in good faith.

No Change Since 1953

73-3-12 Time limit on construction and application to beneficial use -- Extensions -- Procedures and criteria.

- (1) As used in this section:
 - (a) "Public water supplier" is as defined in Section 73-1-4.
 - (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.
- (2)
 - (a) Within the time set by the state engineer under Subsection 73-3-10(5), an applicant shall:
 - (i) construct works, if necessary;
 - (ii) apply the water to beneficial use; and
 - (iii) file proof with the state engineer in accordance with Section 73-3-16.
 - (b) Except as provided by Subsection (4), the state engineer shall extend the time in which an applicant shall comply with Subsection (2)(a) if:
 - (i) the date set by the state engineer is not after 50 years from the day on which the application is approved; and
 - (ii) the applicant shows:
 - (A) reasonable and due diligence in completing the appropriation; or
 - (B) a reasonable cause for delay in completing the appropriation.
 - (c) An applicant shall file a request for an extension of time with the state engineer on or before the date set for filing proof.

- (d) The state engineer may grant an extension of time authorized by Subsection (2)(b) if the state engineer sets a date:
 - (i) no later than 14 years from the day on which the application is approved if the applicant meets the requirements of Subsection (2)(b); and
 - (ii) after 14 years from the day on which the application is approved if:
 - (A) the applicant meets the requirements of Subsection (2)(b); and
 - (B) the state engineer publishes notice as provided in Subsection (2)(e).
 - (e)
 - (i) The state engineer shall publish a notice of the request for an extension of time:
 - (A) once a week for two successive weeks, in a newspaper of general circulation, in the county:
 - (I) in which the water source is located; and
 - (II) where the water will be used; and
 - (B) in accordance with Section 45-1-101 for two weeks.
 - (ii) The notice shall:
 - (A) state that a request for an extension of time has been made; and
 - (B) specify where an interested party may obtain additional information relating to the request.
 - (f) A person who owns a water right or holds an application from the water source referred to in Subsection (2)(e) may file a protest with the state engineer:
 - (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
 - (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
 - (g) The approved extension of time is effective so long as the applicant continues to exercise reasonable and due diligence in completing the appropriation.
 - (h) The state engineer shall consider the holding of an approved application by a public water supplier or a wholesale electrical cooperative to meet the reasonable future water or electricity requirements of the public to be reasonable and due diligence in completing the appropriation for the purposes of this section for 50 years from the date on which the application is approved.
 - (i) If the state engineer finds unreasonable delay or lack of reasonable and due diligence in completing the appropriation, the state engineer may:
 - (i) deny the extension of time; or
 - (ii) grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.
- (3) Except as provided by Subsection (4), an application upon which proof has not been filed shall lapse and have no further force or effect after 50 years from the date on which the application is approved.
- (4)
- (a) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, extend the time in which to file proof by setting a date after 50 years from the day on which the application is approved.
 - (b)
 - (i) The state engineer may extend the time in which the applicant shall comply with Subsection (2)(a) by setting a date after 50 years from the day on which the application is approved if the applicant:
 - (A) is a public water supplier or a wholesale electrical cooperative; and
 - (B) provides information that shows the water applied for in the application is needed to meet the reasonable future requirements of the public.

- (ii) The information provided by a public water supplier shall be in accordance with the criteria listed in Subsection 73-1-4(2)(f).
- (iii) A wholesale electrical cooperative shall provide the information described in Subsection (4)(b)(i)(B) in a report that forecasts:
 - (A) the need for the water to produce power; and
 - (B) the power output of the project for the wholesale electrical cooperative within the next 40 years.
- (c) The state engineer shall extend the time in which to file proof by setting a reasonable date after 50 years from the day on which the application is approved if the applicant:
 - (i) meets the requirements in Subsection (4)(b); and
 - (ii) has:
 - (A) constructed works to apply the water to beneficial use; or
 - (B) made substantial expenditures to construct the works.

Amended by Chapter 221, 2013 General Session

73-3-13 Protests -- Procedure.

- (1) Any other applicant, or any user of water from any river system or water source may file a request for agency action with the state engineer alleging that such work is not being diligently prosecuted to completion.
- (2) Upon receipt of the request for agency action, the state engineer shall give the applicant notice and hold an adjudicative proceeding.
- (3) If diligence is not shown by the applicant, the state engineer may declare the application and all rights under it forfeited.

Amended by Chapter 161, 1987 General Session

73-3-14 Judicial review of state engineer order.

- (1)
 - (a) A person aggrieved by an order of the state engineer may obtain judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this section.
 - (b) Venue for judicial review of an informal adjudicative proceeding is in the county in which the water source or a portion of the water source is located.
- (2) The state engineer shall be joined as a respondent in a petition to review the state engineer's decision, but no judgment for costs or expenses of the litigation may be rendered against the state engineer.
- (3) A person who files a petition for judicial review as authorized in this section shall:
 - (a) name the state engineer as a respondent; and
 - (b) provide written notice in accordance with Subsection (5) to each person who filed a protest in accordance with Section 73-3-7 of:
 - (i) the filing of the petition for judicial review; and
 - (ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure, Rule 24.
- (4) In addition to the requirements of Subsection (3), a protestant in the adjudicative proceeding who files a petition for judicial review shall also name as a respondent the person:
 - (a) who requested the adjudicative proceeding; or
 - (b) against whom the state engineer brought the adjudicative proceeding.
- (5) The written notice required by this section shall:
 - (a) be mailed:

- (i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and
 - (ii) to the address on record with the state engineer's office at the time the order is issued; and
- (b) include:
 - (i) a copy of the petition; and
 - (ii) the address of the court in which the petition is pending.
- (6) If a person who files a petition for judicial review fails to provide notice as required by this section, the court shall dismiss the petition without prejudice upon:
 - (a) the motion of a party;
 - (b) the special appearance of a person who:
 - (i) participated in the adjudicative proceeding; and
 - (ii) is not a party; or
 - (c) the court's own motion.
- (7) A person who files a petition for judicial review is not required to:
 - (a) notwithstanding Subsection 63G-4-401(3)(b), name a respondent that is not required by this section; and
 - (b) notwithstanding Subsection 63G-4-402(2)(a)(iv), identify all parties to the adjudicative proceeding.

Amended by Chapter 165, 2008 General Session

Amended by Chapter 382, 2008 General Session

73-3-15 Dismissal of action for review of informal adjudicative proceedings.

- (1) An action to review a decision of the state engineer from an informal adjudicative proceeding may be dismissed upon the application of any of the parties upon the grounds provided in Utah Rules of Civil Procedure, Rule 41 for:
 - (a) the dismissal of actions generally; and
 - (b) failure to prosecute the action with diligence.
- (2) For the purpose of this section, failure to prosecute a suit to trial within two years after it is filed gives rise to a rebuttable presumption of a lack of diligence.
- (3) In evaluating the rebuttable presumption, the court shall consider the totality of the circumstances.

Amended by Chapter 248, 2009 General Session

73-3-16 Proof of appropriation or permanent change -- Notice -- Manner of proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing -- Statement in lieu of proof of appropriation or change.

- (1) Sixty days before the date set for the proof of appropriation or proof of change to be made, the state engineer shall notify the applicant by mail when proof of completion of the works and application of the water to a beneficial use is due.
- (2) On or before the date set for completing the proof in accordance with the application, the applicant shall file proof with the state engineer on forms furnished by the state engineer.
- (3) Except as provided in Subsection (4), the applicant shall submit the following information:
 - (a) a description of the works constructed;
 - (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;
 - (c) the method of applying the water to beneficial use; and
 - (d)
 - (i) detailed measurements of water put to beneficial use;

- (ii) the date the measurements were made; and
 - (iii) the name of the person making the measurements.
- (4)
 - (a)
 - (i) On applications filed for appropriation or permanent change of use of water to provide a water supply for state projects constructed pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources, or for federal projects constructed by the United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its political subdivisions, public and quasi-municipal corporations, or water users' associations of which the state, its agencies, political subdivisions, or public and quasi-municipal corporations are stockholders, the proof shall include:
 - (A) a statement indicating construction of the project works has been completed;
 - (B) a description of the major features with appropriate maps, profiles, drawings, and reservoir area-capacity curves;
 - (C) a description of the point or points of diversion and rediversion;
 - (D) project operation data;
 - (E) a map showing the place of use of water and a statement of the purpose and method of use;
 - (F) the project plan for beneficial use of water under the applications and the quantity of water required; and
 - (G) a statement indicating what type of measuring devices have been installed.
 - (ii) The director of the Division of Water Resources shall sign proofs for the state projects and an authorized official of the Bureau of Reclamation shall sign proofs for the federal projects specified in Subsection (4)(a).
 - (b) Proof on an application for appropriation or permanent change for a surface storage facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water supply for the reasonable requirements of the public shall include:
 - (i) a description of the completed water storage facility;
 - (ii) a description of the major project features and appropriate maps, profiles, drawings, and reservoir area-capacity curves as required by the state engineer;
 - (iii) the quantity of water stored in acre-feet;
 - (iv) a description of the water distribution facility for the delivery of the water; and
 - (v) the project plan for beneficial use of water including any existing contracts for water delivery.
- (5) The proof on all applications shall be sworn to by the applicant or the applicant's appointed representative.
- (6)
 - (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed professional engineer that show:
 - (i) the location of the completed works;
 - (ii) the nature and extent of the completed works;
 - (iii) the natural stream or source from which and the point where the water is diverted and, in the case of a nonconsumptive use, the point where the water is returned; and
 - (iv) the place of use.
 - (b) The state engineer may waive the filing of maps, profiles, and drawings if in the state engineer's opinion the written proof adequately describes the works and the nature and extent of beneficial use.

- (7) In those areas in which general determination proceedings are pending, or have been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state engineer may petition the district court for permission to:
 - (a) waive the requirements of this section and Section 73-3-17; and
 - (b) permit each owner of an application to file a verified statement to the effect that the applicant has completed the appropriation or change and elects to file a statement of water users claim in the proposed determination of water rights or any supplement to it in accordance with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or proof of change.
- (8) This section does not apply to an instream flow water right authorized by Section 73-3-30.

Amended by Chapter 221, 2013 General Session

73-3-17 Certificate of appropriation -- Evidence.

- (1) Upon the satisfaction of the state engineer that an appropriation, a permanent change of point of diversion, place or purpose of use, or a fixed time change authorized by Section 73-3-30 has been perfected in accordance with the application, and that the water appropriated or affected by the change has been put to a beneficial use, as required by Section 73-3-16 or 73-3-30, the state engineer shall issue a certificate, in duplicate, setting forth:
 - (a) the name and post-office address of the person by whom the water is used;
 - (b) the quantity of water in acre-feet or the flow in second-feet appropriated;
 - (c) the purpose for which the water is used;
 - (d) the time during which the water is to be used each year;
 - (e) the name of the stream or water source:
 - (i) from which the water is diverted; or
 - (ii) within which an instream flow is maintained;
 - (f) the date of the appropriation or change; and
 - (g) other information that defines the extent and conditions of actual application of the water to a beneficial use.
- (2) A certificate issued on an application for one of the following types of projects need show no more than the facts shown in the proof submitted under Section 73-3-16:
 - (a) a project constructed according to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
 - (b) a federal project constructed by the United States Bureau of Reclamation, referred to in Section 73-3-16; and
 - (c) a surface water storage facility in excess of 1,000 acre-feet constructed by a public water supplier.
- (3) A certificate under this section does not extend the rights described in the application.
- (4) Failure to file proof of appropriation or proof of change of the water on or before the date set therefor causes the application to lapse.
- (5) One copy of a certificate issued under this section shall be filed in the office of the state engineer and the other shall be delivered to the appropriator or to the person making the change who may record the certificate in the office of the county recorder of the county in which the water is diverted from the natural stream or source.
- (6) The certificate issued under this section is prima facie evidence of the owner's right to use the water in the quantity, for the purpose, at the place, and during the time specified therein, subject to prior rights.

Amended by Chapter 128, 2011 General Session

73-3-18 Lapse of application -- Notice -- Reinstatement -- Priorities -- Assignment of application -- Filing and recording -- Constructive notice -- Effect of failure to record.

- (1) If an application lapses for failure of the applicant to comply with a provision of this title or an order of the state engineer, the state engineer shall promptly give notice of the lapse to the applicant by regular mail.
- (2) Within 60 days after notice of a lapse described in Subsection (1), the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement.
- (3) The original priority date of a lapsed application may not be reinstated, except upon a showing of fraud or mistake of the state engineer.
- (4) Except as provided in Section 73-3-5.6, Section 73-3-12, Section 73-3-20, or Subsection (2), the priority of an application is determined by the day on which the state engineer's office receives the written application.
- (5) Before the state engineer issues a certificate of appropriation, a right claimed under an application for the appropriation of water may be transferred or assigned by a written instrument.
- (6) An instrument transferring or assigning a right described in Subsection (5) shall be recorded in the office of the applicable county recorder to provide notice of the instrument's contents.
- (7) An instrument described in Subsection (6) that is not recorded as described in Subsection (6) is void against any subsequent assignee in good faith and for valuable consideration of the same application or any portion of the same application, if the subsequent assignee's own assignment is recorded as described in Subsection (6) first.

Amended by Chapter 369, 2014 General Session

73-3-19 Right of entry on private property -- By applicant -- Bond -- Priority.

Whenever any applicant for the use of water from any stream or water source must necessarily enter upon private property in order to make a survey to secure the required information for making a water filing and is refused by the owner or possessor of such property such right of entry, he may petition the district court for an order granting such right, and after notice and hearing, such court may grant such permission, on security being given to pay all damage caused thereby to the owner of such property. In such case the priority of such application shall date from the filing of such petition with the district court as aforesaid.

No Change Since 1953

73-3-20 Right to divert appropriated waters into natural streams -- Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse of application.

- (1) Upon application in writing and approval of the state engineer, any appropriated water may, for the purpose of preventing waste and facilitating distribution, be turned from the channel of any stream or any lake or other body of water, into the channel of any natural stream or natural body of water or into a reservoir constructed across the bed of any natural stream, and commingled with its waters, and a like quantity less the quantity lost by evaporation and seepage may be taken out, either above or below the point where emptied into the stream, body of water or reservoir. In so doing, the original water in such stream, body of water, or reservoir must not be deteriorated in quality or diminished in quantity for the purpose used,

and the additional water turned in shall bear its share of the expense of maintenance of such reservoir and an equitable proportion of the cost of the reservoir site and its construction. Any person having stored that person's appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as the person's necessities may require if the withdrawal does not interfere with the rights of others.

- (2)
 - (a) The state engineer may require an owner of an approved exchange application to provide:
 - (i) information about the diverting works constructed;
 - (ii) information about the extent to which the development under the exchange has occurred; or
 - (iii) other information the state engineer considers necessary to:
 - (A) ensure that the exchange is taking place;
 - (B) establish that the owner still has a legal interest in the underlying water right used as the basis for the exchange; or
 - (C) determine the quantity of water being exchanged.
 - (b) The owner of an exchange application shall provide the information requested by the state engineer within 60 days after the day on which the owner received the notification from the state engineer.
- (3) The state engineer may lapse an approved exchange application described in Subsection (1) if:
 - (a) the applicant has lost a legal interest in the underlying right used to facilitate the exchange;
 - (b) the exchange can no longer be carried out as stated in the application;
 - (c) the applicant has not complied with the conditions established in approving the exchange; or
 - (d) the applicant fails to provide the information requested by the state engineer under Subsection (2).
- (4)
 - (a) Notwithstanding Section 73-3-18, the state engineer may reinstate an exchange application that was lapsed by the state engineer under Subsection (3), if:
 - (i) the applicant files with the state engineer a written request to reinstate the exchange application;
 - (ii) the exchange application is for a small amount of water, as defined in Section 73-3-5.6;
 - (iii) the applicant demonstrates that, before the exchange application lapsed, the applicant or the applicant's predecessor in interest, in accordance with the exchange application:
 - (A) constructed and occupied a residence; and
 - (B) beneficially used the water at the residence; and
 - (iv) the applicant demonstrates that none of the conditions described in Subsection (3) for lapsing an approved exchange application still exist.
 - (b) The priority of an exchange application reinstated under this section shall be the day on which the applicant files a request to reinstate an exchange application that was lapsed by the state engineer.

Amended by Chapter 429, 2013 General Session

73-3-21.1 Priorities between appropriators.

- (1) As used in this section:
 - (a) "Military facility" means an installation, base, air field, camp, post, station, yard, center, or other facility owned, leased, or operated by, or under the jurisdiction of, the United States Department of Defense or the National Guard.
 - (b) "Temporary water shortage emergency" means a shortage of water:
 - (i) whether caused by drought, manmade, or naturally caused;

- (ii) for which the governor has declared an emergency; and
 - (iii) that may not exceed in duration more than two consecutive calendar years.
- (2)
- (a) Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator is entitled to receive the appropriator's whole supply before any subsequent appropriator has any right.
 - (b) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for drinking, sanitation, and fire suppression has a preferential right over any other water right for the duration of the temporary water shortage emergency if:
 - (i) the water is used by:
 - (A) an individual water user;
 - (B) a county or municipality;
 - (C) a public water supplier, as defined in Section 73-1-4; or
 - (D) a military facility that was in operation on March 10, 2011; and
 - (ii) the water is used without unnecessary waste.
 - (c) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for agricultural purposes, including irrigation and livestock water, has a preferential right over any other right, except as provided in Subsection (2)(b).
- (3) A person using water preferentially during a temporary water shortage emergency shall pay annually to the appropriator whose water use is interrupted the reasonable value of the water use interrupted, crop losses, and other consequential damages incurred as a result of the interruption.

Amended by Chapter 201, 2011 General Session

73-3-23 Replacement of water.

In all cases of appropriations of underground water the right of replacement is hereby granted to any junior appropriator whose appropriation may diminish the quantity or injuriously affect the quality of appropriated underground water in which the right to the use thereof has been established as provided by law. No replacement may be made until application in writing has been made to and approved by the state engineer. In all cases replacement shall be at the sole cost and expense of the applicant and subject to such rules and regulations as the state engineer may prescribe. The right of eminent domain is hereby granted to any applicant for the purpose of replacement as provided herein.

No Change Since 1953

73-3-25 Well driller's license -- Enforcement.

- (1) As used in this section:
- (a) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.
 - (b) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.
 - (c) "Well drilling" means the act of:
 - (i) drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well; or
 - (ii) installing or repairing a pump in a well.
- (2)

- (a) Notwithstanding Subsection (3), a person who installs or repairs a pump in a well on the person's own property for the person's own use is not required to obtain a license under this section.
 - (b) Except as provided in Subsection (2)(c), a person who installs or repairs a pump in a well for compensation:
 - (i) shall obtain a license as required by Subsection (3); and
 - (ii) is subject to all of this section's provisions.
 - (c) Notwithstanding the requirements of Subsection (2)(b), a person who performs electrical repairs on a pump in a well is not required to obtain a license as required by Subsection (3).
- (3)
- (a)
 - (i) A person shall obtain a license as provided in this section before engaging in well drilling.
 - (ii) The state engineer may enforce Subsection (3)(a)(i) in accordance with Sections 73-2-25 and 73-2-26.
 - (b) A person applying for a well driller license shall file a well driller bond:
 - (i) with the state engineer; and
 - (ii) payable to the Division of Water Rights.
 - (c)
 - (i) Compliance with this section and the rules authorized by this section is required to obtain or renew a well driller license.
 - (ii) The state engineer may refuse to issue a license if it appears an applicant violates a rule authorized by this section.
 - (d) A well driller license is not transferable.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer may make rules establishing:
- (a) the amount, form, and general administrative requirements of a well driller bond;
 - (b) the amount of a well driller fine;
 - (c) minimum well drilling standards;
 - (d) well driller reporting requirements;
 - (e) the requirements for obtaining a well driller license, including:
 - (i) a well driller license application form;
 - (ii) the license expiration date; and
 - (iii) the license renewal cycle; and
 - (f) a procedure to enforce a well drilling standard or other well drilling requirement.
- (5)
- (a) A well driller shall submit a report to the state engineer:
 - (i) containing data relating to each well;
 - (ii) within 30 days after the completion or abandonment of the well drilling;
 - (iii) on forms furnished by the state engineer; and
 - (iv) containing information required by the state engineer.
 - (b) In accordance with Sections 73-2-25 and 73-2-26, the state engineer may commence an enforcement action against a person who fails to submit a report required by Subsection (5)
 - (a) within 90 days of the day on which the well driller license lapses.
- (6)
- (a) A well driller shall comply with the rules authorized by this section.
 - (b) If the state engineer determines that a well driller has failed to comply with a rule, the state engineer may, in accordance with the procedures established in rule:
 - (i)

- (A) order that a well driller pay a fine; or
 - (B) revoke or suspend the well driller's license; and
 - (ii) exact the bond.
- (7)
- (a) The state engineer shall retain the money from a fine or exacting a bond as a dedicated credit.
 - (b) The state engineer may expend:
 - (i) money retained from a fine for:
 - (A) well drilling inspection;
 - (B) well drilling enforcement; or
 - (C) well driller education; and
 - (ii) money retained from exacting a bond to investigate or correct a deficiency by a well driller that could adversely affect the public interest resulting from noncompliance with a rule authorized by this section.

Amended by Chapter 124, 2010 General Session

73-3-26 Violations -- Penalty.

- (1) A person engaged in well drilling, as described in Subsection 73-3-25(1)(c), is guilty of a crime punishable under Section 73-2-27 if the person does not have a current license to engage in well drilling, as provided by this title.
- (2) Each day that a violation under Subsection (1) continues is a separate offense.

Amended by Chapter 369, 2014 General Session

73-3-27 Requests for segregation or consolidation.

- (1)
- (a) Upon written request, the state engineer shall segregate into two or more parts the following in the state engineer's records:
 - (i) an application to:
 - (A) under Section 73-3-2, appropriate water;
 - (B) under Section 73-3-3, permanently change:
 - (I) the point of diversion;
 - (II) the place of water use; or
 - (III) the purpose of water use; and
 - (ii) a water right for which:
 - (A) the state engineer has issued a certificate according to Section 73-3-17;
 - (B) a court has entered a judgment according to Section 73-4-15; and
 - (C) a person has filed a claim according to Section 73-5-13.
 - (b) A person shall:
 - (i) submit the request authorized by Subsection (1)(a) on a form furnished by the state engineer; and
 - (ii) include:
 - (A) the water right number to be segregated;
 - (B) the name and post-office address of the owner of the application or water right;
 - (C) a statement of the nature of the proposed segregation;
 - (D) the reasons for the proposed segregation; and
 - (E) other information the state engineer may require to accomplish the segregation.

- (2)
 - (a) An action taken by the state engineer on an application or water right before segregation is applicable in all respects to the segregated parts of the application or water right.
 - (b) After the state engineer segregates the application or water right, each segregated part is a separate application or water right in the state engineer's records.
 - (c) The segregation of an application or a water right in the state engineer's records does not:
 - (i) confirm the validity or good standing of the segregated parts of the application or water right; or
 - (ii) extend the time for the construction of works for an application.
- (3) Upon written request, the state engineer may consolidate two or more applications or water rights if the applications or water rights:
 - (a) are from the same source;
 - (b) have the same priority date; and
 - (c) are sufficiently consistent in definition that the consolidated application or water right may be described without referring to the characteristics of the individual application or water right that existed before consolidation.

Amended by Chapter 247, 2009 General Session

73-3-28 Replacement wells -- Requirements -- State engineer's approval -- Application to drill -- Filing -- Form -- Contents -- Notice -- Fees -- Definition -- Plugging of old well.

An existing well may be replaced with a replacement well within a radius of 150 feet from the existing well without the filing of a change application under Section 73-3-3, upon approval first having been obtained from the state engineer.

Such request for permission to drill a replacement well shall be filed with the state engineer upon a form to be furnished by the state engineer. Such form shall contain, but need not be limited to, the name and post office address of the person, corporation or association making the request. The number of the claim or application filed with the state engineer covering the well which is being replaced, the number of the award if in a decree, the reason for the replacement, the location of the replacement well with reference to the nearest United States land survey corner, and from the old well, and the name of the driller employed by the applicant to do the work.

No filing fee shall be required for the filing of such a request for permission to drill a replacement well and the state engineer need give only such notice as, in his judgment, is necessary to protect existing rights and in the event the state engineer shall determine that it is necessary to publish notice the advertising fee shall be paid in advance by the applicant.

The term "replacement well" as used herein means a new well drilled for the sole purpose of replacing an existing well which is impaired or made useless by structural difficulties and no new right in the use of water accrues. Upon completion of the new well the old well must be plugged by the applicant in a manner satisfactory to the state engineer.

Amended by Chapter 136, 2001 General Session

73-3-29 Relocation of natural streams -- Written permit required -- Emergency work -- Violations.

- (1) Except as provided in Subsection (2), a state agency, county, city, corporation, or person may not relocate any natural stream channel or alter the beds and banks of any natural stream without first obtaining the written approval of the state engineer.
- (2)

- (a) The state engineer may issue an emergency permit or order to relocate a natural stream channel or alter the beds and banks of a natural stream as provided by this Subsection (2) and Section 63G-4-502.
- (b) Subject to the requirements of this section, a person may take steps reasonably necessary to alleviate or mitigate a threat before a written permit is issued if an emergency situation arises which involves:
 - (i) immediate or actual flooding; or
 - (ii) threatens the health or well-being of a person.
- (c)
 - (i) If a threat described in Subsection (2)(b) occurs during normal working hours, the state engineer or the state engineer's representative must be notified immediately of the threat. After receiving notification of the threat, the state engineer or the state engineer's representative may orally approve action to alleviate or mitigate the threat.
 - (ii) If a threat described in Subsection (2)(b) does not occur during normal working hours, action may be taken to alleviate or mitigate the threat and the state engineer or the state engineer's representative shall be notified of the action taken on the first working day following the action.
- (d) A written application outlining the action taken or the action proposed to be taken to alleviate or mitigate a threat described in Subsection (2)(b) shall be submitted to the state engineer within two working days following notification of the threat to the state engineer or the state engineer's representative.
- (e)
 - (i) The state engineer shall inspect in a timely manner the site where the emergency action was taken.
 - (ii) After inspection, the state engineer may impose additional requirements, including mitigation measures.
- (f) Adjudicative proceedings following the emergency work shall be informal unless otherwise designated by the state engineer.
- (3) An application to relocate any natural stream channel or alter the beds and banks of any natural stream shall be in writing and shall contain the following:
 - (a) the name and address of the applicant;
 - (b) a complete and detailed statement of the location, nature, and type of relocation or alteration;
 - (c) the methods of construction;
 - (d) the purposes of the application; and
 - (e) any additional information that the state engineer considers necessary, including plans and specifications for the construction of works.
- (4)
 - (a) The state engineer shall, without undue delay, conduct investigations that may be reasonably necessary to determine whether the relocation or alteration will:
 - (i) impair vested water rights;
 - (ii) unreasonably or unnecessarily affect a recreational use or the natural stream environment;
 - (iii) unreasonably or unnecessarily endanger aquatic wildlife; or
 - (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.
 - (b) The state engineer shall approve the application unless the relocation or alteration will:
 - (i) impair vested water rights;
 - (ii) unreasonably or unnecessarily adversely affect a public recreational use or the natural stream environment;
 - (iii) unreasonably or unnecessarily endanger aquatic wildlife; or

- (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.
- (c) The state engineer may approve the application, in whole or in part, with any reasonable terms to protect vested water rights, a public recreational use, the natural stream environment, or aquatic wildlife.
- (5) No cost incurred by the applicant, including any cost incurred to comply with the terms imposed by the state engineer, is reimbursable by the Division of Water Rights.
- (6) Except as provided in Subsection (2), a person who knowingly or intentionally relocates a natural stream channel, or alters the bed or bank of a natural stream channel without first obtaining the written approval of the state engineer is guilty of a crime punishable under Section 73-2-27.
- (7) The state engineer may issue an order for the repair and restoration of the bed and banks of a natural stream channel altered contrary to, or without, a permit issued for that purpose.

Amended by Chapter 369, 2014 General Session

73-3-30 Change application for an instream flow.

- (1) As used in this section:
 - (a) "Division" means the Division of Wildlife Resources, created in Section 23-14-1, or the Division of Parks and Recreation, created in Section 79-4-201.
 - (b) "Fishing group" means an organization that:
 - (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and
 - (ii) promotes fishing opportunities in the state.
 - (c) "Fixed time change" means a change in a water right's point of diversion, place of use, or purpose of use for a fixed period of time longer than one year but not longer than 10 years.
- (2)
 - (a) A division may file a permanent or temporary change application, as provided by Section 73-3-3, for the purpose of providing water for an instream flow, within a specified section of a natural or altered stream channel, necessary within the state for:
 - (i) the propagation of fish;
 - (ii) public recreation; or
 - (iii) the reasonable preservation or enhancement of the natural stream environment.
 - (b) A division may file a change application on:
 - (i) a perfected water right:
 - (A) presently owned by the division;
 - (B) purchased by the division for the purpose of providing water for an instream flow, through funding provided for that purpose by legislative appropriation; or
 - (C) acquired by lease, agreement, gift, exchange, or contribution; or
 - (ii) an appurtenant water right acquired with the acquisition of real property by the division.
 - (c) A division may:
 - (i) purchase a water right for the purposes provided in Subsection (2)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or
 - (ii) accept a donated water right without legislative approval.
 - (d) A division may not acquire water rights by eminent domain for an instream flow or for any other purpose.
- (3)
 - (a) A fishing group may file a fixed time change application on a perfected, consumptive water right for the purpose of providing water for an instream flow, within a specified section of a natural or altered stream channel, to protect or restore habitat for three native trout:

- (i) the Bonneville cutthroat;
 - (ii) the Colorado River cutthroat; or
 - (iii) the Yellowstone cutthroat.
- (b) Before filing an application authorized by Subsection (3)(a) to change a shareholder's proportionate share of water, the water company shall submit the decision to approve or deny the change request required by Subsection 73-3-3.5(3) to a vote of the shareholders:
 - (i) in a manner outlined in the water company's articles of incorporation or bylaws;
 - (ii) at an annual or regular meeting described in Section 16-6a-701; or
 - (iii) at a special meeting convened under Section 16-6a-702.
- (c) The specified section of the natural or altered stream channel for the instream flow may not be further upstream than the water right's original point of diversion nor extend further downstream than the next physical point of diversion made by another person.
- (d) The fishing group shall receive the Division of Wildlife Resources' director's approval of the proposed change before filing the fixed time change application with the state engineer.
- (e) The director of the Division of Wildlife Resources may approve a proposed change if:
 - (i) the specified section of the stream channel is historic or current habitat for a species listed in Subsections (3)(a)(i) through (iii);
 - (ii) the proposed purpose of use is consistent with an existing state management or recovery plan for that species; and
 - (iii) the fishing group has:
 - (A) entered into a programmatic Candidate Conservation Agreement with Assurances with the United States Fish and Wildlife Service, as authorized by 16 U.S.C. Secs. 1531(a)(5) and 1536(a)(1), that gives the water right holder the option to receive an enhancement of survival permit, as authorized by 16 U.S.C. Sec. 1539(a)(1)(A), or a certificate of inclusion, for a fixed time change application that benefits a candidate species of trout; or
 - (B) until a programmatic Candidate Conservation Agreement with Assurances described in Subsection (3)(e)(iii)(A) becomes valid and enforceable, entered into a contract with the water right holder agreeing to defend and indemnify the water right holder for liability under Section 1538(a) of the Endangered Species Act, 16 U.S.C. Secs. 1531 through 1544, for an action taken by the water right holder under the terms of the water right holder's agreement with the fishing group for a fixed time change application.
- (f) The director may deny a proposed change if the proposed change would not be in the public's interest.
- (g)
 - (i) In considering a fixed time change application, the state engineer shall follow the same procedures as provided in this title for an application to appropriate water.
 - (ii) The rights and the duties of a fixed time change applicant are the same as provided in this title for an applicant to appropriate water.
- (h) A fishing group may refile a fixed time change application by filing a written request with the state engineer no later than 60 days before the application expires.
- (i)
 - (i) The water right for which the state engineer has approved a fixed time change application will automatically revert to the point of diversion and place and purpose of use that existed before the approved fixed time change application when the fixed time change application expires or is terminated.
 - (ii) The applicant shall give written notice to the state engineer and the lessor, if applicable, if the applicant wishes to terminate a fixed time change application before the fixed time change application expires.

- (4) In addition to the requirements of Section 73-3-3, an application authorized by this section shall:
 - (a) set forth the legal description of the points on the stream channel between which the instream flow will be provided by the change application; and
 - (b) include appropriate studies, reports, or other information required by the state engineer demonstrating the necessity for the instream flow in the specified section of the stream and the projected benefits to the public resulting from the change.
- (5)
 - (a) For a permanent change application or a fixed time change application filed according to this section, 60 days before the date on which proof of change for an instream flow is due, the state engineer shall notify the applicant by mail or by any form of communication through which receipt is verifiable of the date when proof of change is due.
 - (b) Before the date when proof of change is due, the applicant must either:
 - (i) file a verified statement with the state engineer that the instream flow uses have been perfected, setting forth:
 - (A) the legal description of the points on the stream channel between which the instream flow is provided;
 - (B) detailed measurements of the flow of water in second-feet changed;
 - (C) the period of use; and
 - (D) any additional information required by the state engineer; or
 - (ii) apply for a further extension of time as provided for in Section 73-3-12.
 - (c)
 - (i) Upon acceptance of the verified statement required under Subsection (5)(b)(i), the state engineer shall issue a certificate of change for instream flow use in accordance with Section 73-3-17.
 - (ii) The certificate expires at the same time the fixed time change application expires.
- (6) No person may appropriate unappropriated water under Section 73-3-2 for the purpose of providing an instream flow.
- (7) Water used in accordance with this section is considered to be beneficially used, as required by Section 73-3-1.
- (8) A physical structure or physical diversion from the stream is not required to implement a change for instream flow use.
- (9) This section does not allow enlargement of the water right that the applicant seeks to change.
- (10) A change application authorized by this section may not impair a vested water right, including a water right used to generate hydroelectric power.
- (11) The state engineer or the water commissioner shall distribute water under an approved or a certificated instream flow change application according to the change application's priority date relative to the other water rights located within the stream section specified in the change application for instream flow.
- (12) An approved fixed time change application does not create a right of access across private property or allow any infringement of a private property right.

Amended by Chapter 379, 2013 General Session

73-3-31 Water right for watering livestock on public land.

- (1) As used in this section:
 - (a) "Acquire" means to gain the right to use water through obtaining:
 - (i) an approved application to appropriate water; or
 - (ii) a perfected water right.

- (b) "Allotment" means a designated area of public land available for livestock grazing.
- (c) "Animal unit month (AUM)" is the amount of forage needed to sustain one cow and her calf, one horse, or five sheep and goats for one month.
- (d)
 - (i) "Beneficial user" means the person that has the right to use the grazing permit.
 - (ii) "Beneficial user" does not mean the public land agency issuing the grazing permit.
- (e) "Grazing permit" means a document authorizing livestock to graze on an allotment.
- (f) "Livestock" means a domestic animal raised or kept for profit or personal use.
- (g) "Livestock watering right" means a right for:
 - (i) livestock to consume water:
 - (A) directly from the water source located on public land; or
 - (B) from an impoundment located on public land into which the water is diverted; and
 - (ii) associated uses of water related to the raising and care of livestock on public land.
- (h)
 - (i) "Public land" means land owned or managed by the United States or the state.
 - (ii) "Public land" does not mean land owned by:
 - (A) the Division of Wildlife Resources;
 - (B) the School and Institutional Trust Lands Administration; or
 - (C) the Division of Parks and Recreation.
- (i) "Public land agency" means the agency that owns or manages the public land.
- (2) A public land agency may not:
 - (a) condition the issuance, renewal, amendment, or extension of any permit, approval, license, allotment, easement, right-of-way, or other land use occupancy agreement regarding livestock on the transfer of any water right directly to the public land agency;
 - (b) require any water user to apply for, or acquire a water right in the name of, the public land agency as a condition for the issuance, renewal, amendment, or extension of any permit, approval, license, allotment, easement, right-of-way, or other land use occupancy agreement regarding livestock; or
 - (c) acquire a livestock watering right if the public land agency is not a beneficial user.
- (3) The state engineer may not approve a change application under Section 73-3-3 for a livestock watering right without the consent of the beneficial user.
- (4) A beneficial user may file a nonuse application under Section 73-1-4 on a livestock watering right or a portion of a livestock watering right that the beneficial user puts to beneficial use.
- (5) A livestock watering right is appurtenant to the allotment on which the livestock is watered.
- (6)
 - (a)
 - (i) A beneficial user or a public land agency may file a request with the state engineer for a livestock water use certificate.
 - (ii) The state engineer shall:
 - (A) provide the livestock water use certificate application form on the Internet; and
 - (B) allow electronic submission of the livestock water use certificate application.
 - (b) The state engineer shall grant a livestock water use certificate to a beneficial user if the beneficial user:
 - (i) demonstrates that the beneficial user has a right to use a grazing permit for the allotment to which the livestock watering right is appurtenant; and
 - (ii) pays the fee set in accordance with Section 73-2-14.
 - (c) A livestock water use certificate is valid as long as the livestock watering right is:

- (i) held by a beneficial user who has the right to use the grazing permit and graze livestock on the allotment;
 - (ii) put to beneficial use within a seven-year time period; or
 - (iii) subject to a nonuse application approved under Section 73-1-4.
- (7) A beneficial user may access or improve an allotment as necessary for the beneficial user to beneficially use, develop, and maintain the beneficial user's water right appurtenant to the allotment.
- (8) If a federal land management agency reduces livestock grazing AUMs on federal grazing allotments, and the reduction results in the partial forfeiture of an appropriated water right, the amount of water in question for nonuse as a livestock water right shall be held in trust by the state engineer until such water may be appropriated for livestock watering, consistent with this act and state law.
- (9) Nothing in this section affects a livestock watering right or a livestock water use certificate held by a public land agency on May 13, 2014.

Amended by Chapter 420, 2014 General Session